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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/049,891  | 07/08/2002  | Maria Raidel         | KCC 4814 (KC #15,978) | 2410             |
| 321   | 7590        | 01/27/2005           | EXAMINER              |                  |
| SENNIGER POWERS LEAVITT AND ROEDEL<br>ONE METROPOLITAN SQUARE<br>16TH FLOOR<br>ST LOUIS, MO 63102 |             |                      | HILL, LAURA C         |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 3761                  |                  |

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/049,891             |  | RAIDEL ET AL.       |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Laura C. Hill          |  | 3761                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 44-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11 Apr 2002</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Specification***

The use of the trademark Coform has been noted in this application on page 3, line 21. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

1. Claims 44-49 and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Lassen et al. (EP 0687453 A1). With regard to claim 44, the Lassen et al. reference discloses absorbent core 18 of sanitary napkin 10, which absorbs body fluids and conforms to the body, having the tissue construction bi-folded to form two symmetrical halves and a flexure axis 24/ fold line along longitudinal centerline Y-Y (col. 1, ll. 3-5, col. 6, ll. 13-22 and col. 10, ll. 2-7).

With regard to claims 45-49, the Lassen et al. reference discloses absorbent core which includes a body-facing/inner surface 20 positioned adjacent the cover 12, a garment-facing/outer surface 22 positioned adjacent the baffle 14, a flexure axis 24/fold line with a depth less than absorbent article thickness that is formed in at least one of

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the surfaces 20,22, and a depth extending substantially through the entire thickness (fig. 1 and col. 3, ll. 55-col. 4, line 1).

With regard to claim 56, the Lassen et al. reference discloses inner and outer layers of flexure axis 24/fold line with multiple slits 36/scores that extend through a percentage of the inner surface 20 (col. 8, ll. 26-27 and fig. 1). With regard to claim 57, the Lassen et al. reference discloses inner surface 20 nearer the wearer's body than outer surface 22 and discloses inner surface 20 having a polygon shape (fig. 1). With regard to claim 58, the Lassen et al. reference discloses cover layer 12 adapted for contact with wearer's skin, inner layer 20 that is liquid permeable since it is a part of absorbent body 18, baffle 14/backing layer in opposed relation with inner layer 20 and the absorbent body 18 disposed between cover layer 12 and baffle 14/ backing layer (fig. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 50-55 and 59-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lassen et al. ('453) as applied to claims 44, 49 and 58. With regard to claims 50-53, the Lassen et al. reference discloses absorbent core which includes a body-facing surface 20 positioned adjacent the cover 12 and a garment-facing surface 22 positioned adjacent the baffle 14 as discussed in claim 49 but does not specify the dimensions of the inner layer/body-facing surface 20. It would be obvious to one of ordinary skill in the art to construct the inner layer with less than seventy-five percent of the surface area of the outer layer since it is well known that these ranges will enhance absorbent performance and minimize layer occlusion and leakage as specified.

With regard to claim 54, the Lassen et al. reference discloses absorbent core 18 with a single flexure axis 24/ fold line as discussed in claim 44. It would be obvious to one of ordinary skill in the art to include a plurality of fold lines since no added functional benefit of this structural element is specified. With regard to claim 55, the Lassen et al. reference discloses flexure axis 24/fold line forms first and second members 26 and 28/segments, which have a polygonal shape (fig. 1).

With regard to claims 59-60, the Lassen et al. reference discloses absorbent article with the layers and positioning discussed in claim 58 but with no side wings. It is obvious to one of ordinary skill in the art to include side wings with an adhesion system on a sanitary napkin or other absorbent body to prevent side leakage of body fluids.

With regard to claim 61, the Lassen et al. reference discloses a means for attaching the sanitary napkin 10 to an undergarment using adhesive placed on the garment side/outer surface of baffle 14/backing layer (col. 13, ll. 38-40).

With regard to claim 62, the Lassen et al. reference discloses a transfer layer 23 positioned between the cover 12 and absorbent core 18 for rapidly transporting body fluids into the absorbent core and to reduce the occurrence of rewet and a surfactant sprayed on cover 12 to enhance liquid penetration to the absorbent core 18 (col. 4, ll. 2-6 and 47-49). It would be obvious to one of ordinary skill in the art that the absorbent body could include a distributing layer since the surfactant of Lassen et al. could act as a distributing layer which functions the same as a liquid reservoir/collection means as specified.

With regard to claim 63, the Lassen et al. reference discloses an absorbent article previously discussed that is a sanitary napkin (col. 2, line 2).

With regard to claim 64, the Lassen et al. reference discloses an absorbent core 18 that can be constructed of creped cellulose wadding (col. 5, ll. 48-49). The Meyer et al. reference (US 4,798,603), incorporated by reference into the Lassen et al. reference, includes a top sheet 14 made of synthetic polymers such as polypropylene (col. 4, ll. 32-35). It would be obvious to one of ordinary skill in the art that one of the layers of the absorbent body could comprise Coform, which is a blend of cellulose and polypropylene, since no added functional benefit of using this specific material is disclosed.

With regard to claim 65, the Lassen et al. reference discloses the absorbent core can be constructed from super absorbent polymers (col. 5, line 50).

With regard to claims 66-69, the Lassen et al. reference discloses a cover 12 that encases a central and edge portion of sanitary napkin 10 or alternatively the cover 12 can extend beyond the absorbent core 18 and be peripherally joined by an adhesive or any other joining method known in the art (col. 4, ll. 16-27 and fig. 1). It would be obvious to one of ordinary skill in the art that the central and edge portions of the absorbent article could be bonded together using a hot-melt adhesive or welding since both would combine the structural elements and perform the same overall function.

With regard to claim 70, the Lassen et al. reference discloses a transfer layer 23/flow layer positioned between the cover 12 and absorbent core 18 for rapidly transporting body fluids into the absorbent core and to reduce the occurrence of rewet and a surfactant sprayed on cover 12 to enhance liquid penetration to the absorbent core 18 as discussed in claim 62 (col. 4, ll. 2-6 and 47-49).

With regard to claims 71-72, the Meyer et al. reference ('603), incorporated by reference, discloses an aforementioned transport layer made of polyester, which could obviously be altered to be visually recognizable from the other layers including different coloring since no functional benefit is specified (col. 11, line 44).

With regard to claim 73, the Meyer et al. reference ('603), incorporated by reference, discloses wrap sheet 30/cover layer that is configured to have an effective average pore size which is smaller than the effective pore size of the transport layer and functions to reduce and restrict flow back of liquids against the wearer's skin (col. 6, ll.

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11-14). It would be obvious to one of ordinary skill in the art the layer porosity could decrease between layers since the absorbent article of Lassen et al. functions to diverse fluid away from the user's body as specified.

With regard to claims 74-81, the purpose of the method claimed is that by simultaneously depositing the absorbent cores 30 on the second web of material and punching the second web of material 26, the result is that the second web of material is punched in the resulting composite web 48 along the contours of the absorbent cores 30 deposited on the web and first material web waste is minimized. The Meyer et al. reference ('603), incorporated by reference, obviously discloses a wrap sheet 30 which forms a plurality of individual funnels or quilts/embossed regions which help to direct liquids into the interior of the fibrous mass and provide a more rapid absorption of the liquid (col. 6, ll. 29-32). "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, since the end absorbent article has the same structure as claimed, a product-by-process rejection is applicable to claims 74-81.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Carlucci et al. reference, European patent no. 0,804,916 A1,



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is cited for showing two pleats folded toward the longitudinal side margins of absorbent article and expanding layer with garment and body-facing surfaces to conform to user's body.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700



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